

FACTSHEET

TITLE: **WAIVER NO. 04016**, requested by the Edenton South Town Home Association, to waive the requirement for the construction of a sidewalk in the pedestrian easement associated with the Corrected Final Plat of Edenton South 10th Addition, generally located at S. 70th Street and Old Cheney Road.

STAFF RECOMMENDATION: **Denial.**

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/24/04
Administrative Action: 11/24/04

RECOMMENDATION: Denial of the waiver of the sidewalk and approval of an extension of time for installation of the sidewalk for four years from the date of Council action (8-0: Carroll, Krieser, Sunderman, Pearson, Marvin, Taylor, Larson and Carlson voting 'yes'; Bills-Strand absent).

FINDINGS OF FACT:

1. This request to waive the requirement for the construction of a sidewalk in the pedestrian easement is associated with the Corrected Plat of Edenton South 10th Addition, which was approved on September 10, 1997.
2. The staff recommendation of denial is based upon the "Analysis" as set forth on p.3-4, concluding that the resolution approving the corrected plat required that the sidewalk within the pedestrian easement be installed at the same time that Culwells Court is paved. The sidewalk was not installed as required. The damming effect can be alleviated with culverts in the swale area under the sidewalk. The staff finds that the installation of the sidewalk would not result in actual difficulties or substantial hardship or injustice and that the waiver is not justified.
3. The applicant's testimony is found on p.5-6, indicating that the sidewalk goes from nowhere to nowhere and is completely unnecessary; it is not needed and is not desirable at this location; and that every property owner in the Town Home Association supports this waiver. The applicant also believes that the construction of the sidewalk will have an adverse impact on a very functional drainageway.
4. Testimony in support is found on p.7, including the Edenton South Homeowners Association, and the record consists of a notation in support by the residents of 7114 Culwells Court (p.16).
5. There was no testimony in opposition.
6. On November 24, 2004, a motion for approval failed 2-6 (Sunderman and Larson voting 'yes'; Carroll, Krieser, Pearson, Marvin, Taylor and Carlson voting 'no'; Bills-Strand absent).
7. On November 24, 2004, the Planning Commission voted 8-0 to recommended denial of the waiver of the sidewalk and approval of an extension of time for installation of the sidewalk for four years from the date of Council action. The Commission found that there will be sidewalks constructed on Old Cheney Road in the future and this sidewalk will provide access to the neighborhood.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: November 30, 2004

REVIEWED BY: _____

DATE: November 30, 2004

REFERENCE NUMBER: FS\CC\2004\WVR.04016

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for November 24, 2004 PLANNING COMMISSION MEETING

P.A.S.: Waiver #04016

PROPOSAL: Waive the sidewalk in the pedestrian easement associated with Corrected Plat of Edenton South 10th Addition Final Plat #97034

LOCATION: S. 70th Street & Old Cheney Rd.

CONCLUSION: Corrected plat of Edenton South 10th Addition final plat was approved on September 10, 1997. The Resolution required that the sidewalk within the pedestrian easement be installed at the same time that Culwells Court is paved. The damming effect can be alleviated with culverts in the swale area under the sidewalk. This waiver request does not meet the conditions of Section 26.31.010.

RECOMMENDATION:	Denial
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Outlot "A", corrected plat of Edenton South 10th Addition, located in the NW 1/4 of Section 15, Township 9, Range 7, Lancaster County, NE

EXISTING ZONING: R-3, Residential

EXISTING LAND USE: Attached two- family dwellings and open space.

SURROUNDING LAND USE AND ZONING:

North:	R-1, Residential	Single family dwellings
South:	R-3, Residential	Attached two-family dwellings
East:	R-1, Residential	Single family dwellings
	R-3, Residential	Attached two-family dwellings
West:	R-3, Residential	Church

HISTORY:

September 10, 1997 Corrected Plat of Edenton South 10th Addition Final Plat was approved by the Planning Commission.

October 23, 1996

Edenton South 10th Addition Final Plat was approved by the Planning Commission.

July 22, 1996

Edenton South 1st Addition Preliminary Plat #96005 and Special Permit #1607 were approved by the City Council.

COMPREHENSIVE PLAN SPECIFICATIONS:

"Interconnected networks of streets, trails, and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, conserve energy and for the convenience of the residents." (F-18)

"Transit, pedestrian, and bicycle networks should maximize access and mobility to provide alternatives and reduce dependence upon the automobile." (F-19)

"Streets and public spaces should be safe, comfortable, and interesting to the pedestrian." (F-19)

"Sidewalks should be provided on both sides of all streets, or in alternative locations as allowed through design standards or the Community Unit Plan process." (F-66)

"Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods." (F-66)

The sidewalk system should be complete and without gaps." (F-89)

TRAFFIC ANALYSIS:

S. 70th St. and Old Cheney Rd. are classified as arterials.
Culwells Ct. is a private roadway.

ANALYSIS:

1. This is a request to eliminate the sidewalk within a pedestrian easement.
2. Section 26.27.020 of the Land Subdivision Ordinance states that sidewalks shall be constructed on both sides of all streets within the subdivision and on the side of the streets abutting the subdivision.
3. A condition for approval of the final plat was to install the sidewalk in the pedestrian easement as shown on the final plat or post a surety in the amount of \$1,000.00. A surety in the amount of \$1,000.00 was posted.
4. The subdivision agreement for Edenton South 10th Addition states that the subdivider agrees to complete the private improvements shown on the preliminary plat and use permit, which includes the sidewalk in the pedestrian easement.
5. The sidewalk was required to be installed at the same time Culwells Court was paved. The omission of installing the sidewalk at the required time does not justify a hardship.

6. Section 26.23.125 of the Land Subdivision Ordinance requires a pedestrian way when a block exceeds 1,000 feet in length and where needed for pedestrian traffic. This block length is well in excess of 1,000 feet.
7. Without this pedestrian way, pedestrians/bicyclists who want to travel on S. 70th St. or west on Old Cheney Rd. would have to travel approximately ½ mile out of their way to access Old Cheney Rd. or S. 70th St.
8. Section 26.31.010 of the Land Subdivision Ordinance states, "Whenever a lot, tract, or parcel of land is of such unusual size or shape or is surrounded by such development or unusual condition that the strict application of the requirements contained in these regulations would result in actual difficulties or substantial hardship or injustice, the subdivider may request a modification of such requirements."
9. Although there have been grading and drainage issues in the past, this sidewalk can be installed by using culverts under the sidewalk.
10. Nationally and locally more emphasis is being placed on encouraging people to walk. To facilitate walking, pedestrians must have a safe place to walk. This includes installing sidewalks and separating pedestrians from automobiles.

Prepared by:

Tom Cajka
Planner

DATE: November 10, 2004

APPLICANT: Edenton South Town Home Association
Craig Larabee, President
7130 Culwells Ct.
Lincoln, NE 68516
(402) 488-0654

OWNER: same as applicant

CONTACT: same as applicant

WAIVER NO. 04016

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 24, 2004

Members present: Carroll, Krieser, Sunderman, Pearson, Marvin, Taylor, Larson and Carlson; Bills-Strand absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. Bill Austin, 301 S. 13th Street, Suite 400, appeared on behalf of the Edenton South Town Home Association, which has made this application for the waiver of the construction of a sidewalk in the pedestrian way easement. With all due respect to the staff report and recommendation, Austin stated that it is the hope and mission of the townhome association to show that this is both an unneeded and undesirable sidewalk at this location.

Austin explained that this is a request to waive the 5' sidewalk easement located at the southeast corner of Old Cheney Road at So. 70th Street. It goes through an outlot and is supposed to exit out onto Old Cheney Road. This easement was dedicated through the platting of the Corrected Plat of Edenton South 10th Addition, a townhome development. This is a sidewalk that goes from nowhere to nowhere and is completely unnecessary. There is a 13.5 feet distance on Old Cheney Road between curb line and the fence that is constructed all the way around this development. This sidewalk, if constructed, would go out onto a 13.5 ft. piece of swale/grass area. There is no sidewalk constructed on Old Cheney Road and Austin believes it is unlikely that there will be. It seems unnecessary to have a sidewalk that would extend out onto grass. On the other terminus to the south, this sidewalk ends up going onto a private driveway. On the other side of the street, there are no sidewalks on either corner. There is another residential development catty-corner that is essentially barricaded by another stockade fence. Directly to the north there is again residential development. There is no place to go in using this sidewalk.

Austin went on to state that in recognition and in support of this waiver, every one of the homeowners within Edenton South 10th signed an original petition. It has taken over a year for this application to come forward and half of that petition was lost and is not in the record, but the president of the homeowners association has stated that everyone within this townhome addition is opposed to the construction of the sidewalk.

Austin agreed that the sidewalk was supposed to be installed at the same time as Culwells Court, but apparently no one has missed this sidewalk even though there may not be a hardship to waive it. Since 1997, when this addition was first developed, no one has felt that this sidewalk was a significant need. Austin agreed that the distance is more than 1000 feet, thus requiring a sidewalk, but the critical point, "where needed for pedestrian traffic", is not met. There is no need for this sidewalk and the people who live in this area do not want it and will not use it. There is more than

adequate access to this area from Stevens Ridge Road and Cross Creek Road, both to the east and to the south.

Austin then pointed out that there is some mention in the staff report about bicycles using this sidewalk, but frankly, this is not a bike path for bicyclists. This is a pedestrian way and it should not be used by bicycles if it is constructed.

The area in which this sidewalk would be constructed is across a swale/drainageway which goes to a drainage inlet that is somewhat further to the east. While staff suggests there have been grading and drainage issues in the past, Austin believes this is a very functional drainageway and there have been no problems with the drainage. Why interfere with that drainage with culverts to support the sidewalk?

Austin stated that the townhome residents believe that they have more than enough sidewalks and that this sidewalk is unnecessary.

Pearson believes that this is a request to waive the sidewalk “after the fact” (after the fact that the final plat was done and agreed upon). This was a condition that was agreed upon by the developer, they entered into a subdivision agreement and everything was built except for the sidewalk. The landscaping and fencing was constructed knowing that the sidewalk was not in place. Austin’s response was that most of these waivers end up “after the fact”. It was not the fault of these homeowners that the sidewalk was not constructed. What we have now are homeowners who have purchased their properties and began to decide how they wanted to landscape Outlot A, and only then did they become aware of the fact that this pedestrian way easement was a problem. Yes, it is after the fact, but seven years shows that everyone can live quite easily without this sidewalk.

Taylor inquired whether the property owners were “hoodwinked” into making that purchase or was that information not available prior to making their purchase. There is no way they could have found out that there was supposed to be a sidewalk in place? Austin acknowledged that it is public record and easements show up on plats and on title binders and certificates of title. Austin suggested that, while we can rely upon public record, many times people do not know about it.

2. Craig Larabee, President of Edenton South Town Home Association, testified in support and presented a map showing the other access points into the neighborhood. Even if the public were to come by the sidewalk, there is nowhere to go. The drainage runs from west to east and he believes the sidewalk will have an adverse impact on the drainage. He believes it is also a safety issue with the 36" open culvert. Dumping the pedestrians out on Old Cheney Road is not safe for pedestrians or bicyclists. The Edenton South Town Home Association is part of Edenton South. Carroll confirmed that there are sidewalks on just one side of the street through the townhome area.

Marvin believes the sidewalk would provide access over to 72nd Street. Larabee responded, stating that they come off of Stevens Creek Road. It is actually closer to go down to the current outlets than to come back down and go into the Edenton South Town Home Association. There is currently access to 70th and to Old Cheney.

3. Cheryl Stubbendick, 7651 Kennelley Drive, testified in support as President of the **Edenton South Homeowners Association**, which includes the Town Home Association. The larger Edenton South Homeowners Association also supports this waiver request, concurring that there is very little pedestrian traffic that would want to enter the neighborhood from 70th or Old Cheney. They are concerned that a person who might enter Culwells from this sidewalk might not go south to make the turnaround and would exit or go east, crossing private property. The other problem is potential for vandalism. She concurs that it is basically a sidewalk going from nowhere to nowhere.

4. Virginia Parker, 7124 Culwells Court, testified in support. When she was purchasing this townhouse she asked the builder about there being no curb and she asked if there was going to be a sidewalk built there, and she was told no. Had she known there was going to be a sidewalk there, she would not have purchased her property. She feels safe with the way it is now.

There were approximately 14 people in the audience in support of this waiver.

There was no testimony in opposition.

Staff questions

Marvin inquired about sidewalk on Old Cheney Road. Tom Cajka of Planning staff agreed that there is no sidewalk at this time. Chad Blahak of Public Works did not know exactly when Old Cheney east of 70th Street is programmed to be improved; however, when it is improved, a sidewalk will be constructed on both sides of Old Cheney Road.

Pearson stated that she does not mind so much that they have not put the sidewalk in, but she hates the fact that if it is waived, it will never be put in. When the sidewalks are put on Old Cheney Road, it might be to the benefit of the neighborhood to put this sidewalk in at that time. Cajka advised that there have been waivers where the time for construction has been extended as opposed to waiving the sidewalk. If the Commission wanted to wait until Old Cheney Road was improved, there would need to be a waiver to extend the timeline.

Carlson believes that a bond has been posted for this sidewalk. The developer would have posted the bond during the platting process to insure that this sidewalk was installed. With this waiver, does the city give the money back to the developer? Cajka advised that the developer's "surety" would be released.

Response by the Applicant

Austin clarified that the developer would not receive a check from the city. The money is probably in escrow and it could be directed toward landscaping within this development.

While Public Works suggests that there will be a sidewalk on Old Cheney Road, Austin suggested that the Commission go out and take a look. It is only 13.5' from the fence now. He suggests there will be no sidewalk on the south side of Old Cheney Road when it is improved and widened. Why mess up the drainage at this location when it works now?

Pearson wondered if the applicant would be opposed to extending the time line to when Old Cheney Road has a sidewalk, which means if there is never a sidewalk on the south side, this sidewalk would never be constructed. Austin believes the client would prefer approval of the waiver. The sidewalk is one of many straws in the bundle. There is a feeling of security. This is not an area where you are going to find a lot of children. It is a place where people are retiring. We don't wanted gated communities, but to have a little bit of security from the back of your home is not too much to ask, especially when the sidewalk just doesn't go anyplace.

Carlson inquired whether the escrow goes back to the homeowners association. Austin stated that it does not.

Taylor inquired as to the requirement for the sidewalk. Blahak stated that it is a result of the subdivision ordinance requirement that sidewalks be constructed in block lengths that exceed 1000 feet. There are other places in town where we have sidewalks going across drainage areas with culverts in place.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 24, 2004

Larson moved to approve the waiver, seconded by Sunderman.

Larson has been by this corner hundreds of times. It is completely fenced. There is a severe change in elevation. He believes it was an absolute mistake to require the sidewalk in the first place. There is nothing at that intersection to which people would want to walk. There is just no need for a sidewalk that goes from nowhere to nowhere.

Marvin noted that the previous waiver request on today's agenda literally went nowhere by going into someone's back yard. This one does go to an arterial street. He wants to argue for connectivity.

Carroll pointed out that if you were on the north end of the Edenton development and you wanted to walk to church on the west side of 70th Street, you cannot get there without this sidewalk. Old Cheney Road will have sidewalks in the future. At that time, if you want to walk there, you should have the easement there so that you can walk to church or west as far as you want. You cannot say there will never ever be a sidewalk along Old Cheney Road. Public Works has the rule of 1,000 ft. block length and we have to look at those requirements. He believes this sidewalk gives access to the neighborhood.

Pearson stated that if the motion for approval does not pass, she will suggest that the timeline be extended to when Old Cheney Road is improved. To require it today, does not make a lot of sense, but who can say what is going to happen in the future? If Old Cheney does get a sidewalk on the south side, we may want to connect to it. It would keep the options open.

Taylor believes there is a reason for planning the sidewalk. We don't know when Old Cheney Road is going to be paved, but we do know that it is part of the Comprehensive Plan to do that. If this motion fails, he definitely would not want the townhome residents to have to put a sidewalk in now, but he would agree to delaying the time requirement as suggested by Pearson.

Motion for approval failed 2-6: Sunderman and Larson voting 'yes'; Carroll, Krieser, Pearson, Marvin, Taylor and Carlson voting 'no'; Bills-Strand absent.

Pearson moved to waive the sidewalk in the pedestrian easement until the time a sidewalk is installed on the south side of Old Cheney Road, seconded by Larson.

Ray Hill of Planning staff suggested that the proper motion would be to deny the waiver request and approve an extension of time for installation of the sidewalk for four years from the Council action. It should have been built when the street was paved, but since it was not, the standard sidewalk timeline is four years.

Pearson amended her motion to deny the waiver and extend the completion date for four years from Council action, seconded by Larson and carried 8-0: Carroll, Krieser, Sunderman, Pearson, Marvin, Taylor, Larson and Carlson voting 'yes'; Bills-Strand absent. This is a recommendation to the City Council.



2002 aerial

Waiver #04016 S. 70th & Old Cheney Rd.

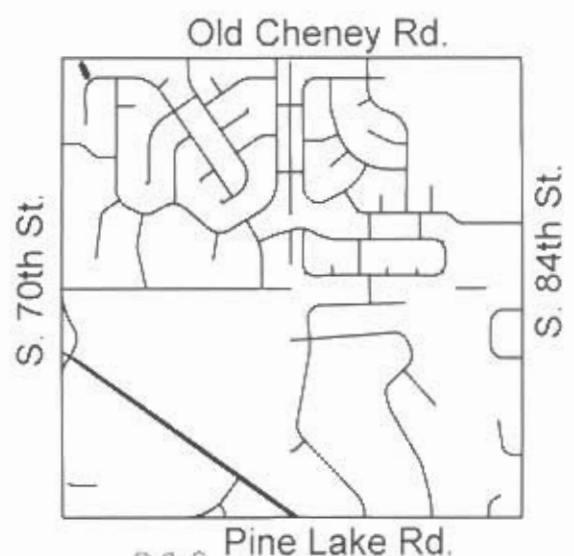
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 15 T9N R7E



Zoning Jurisdiction Lines
City Limit Jurisdiction



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Lincoln City - Lancaster County Planning De

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857.23



CHARLES THONE
DONALD H. ERICKSON
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DANIEL B. KINNAMON
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VIRGIL K. JOHNSON
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CHARLES D. HUMBLE
ALAN M. WOOD
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301 SOUTH 13TH STREET
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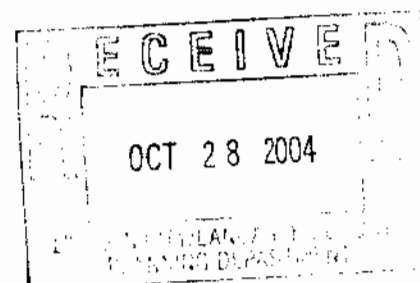
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PURPOSE STATEMENT

Constructing a sidewalk in this pedestrian area will have the effect of creating a "dam" situation causing water to back up and onto the adjacent private properties. In addition to the potential water problems, the chances of pedestrians actually using this pedestrian way is greatly diminished by the fact that it leads into a private roadway, which on one end is a cul-de-sac. Attached is a petition signed by homeowners of Edenton South Townhome Association expressing their opposition to the referenced pedestrian way. Also attached is a Plat of the area showing where the pedestrian way is located.



CHARLES THONE
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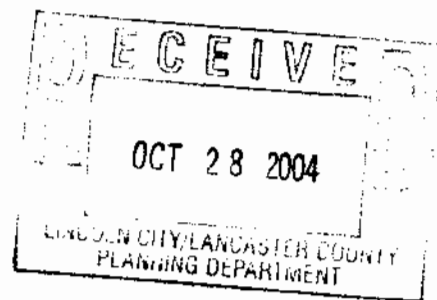
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LIST OF ALL WAIVERS BEING REQUESTED

A waiver is being requested of Section 26.23.095 of the Land Subdivision Ordinance which requires that concrete sidewalks be constructed in pedestrian ways.



By signing this petition I am verifying I am a homeowner of Edenton South Town Home Association and occupy the same. I protest the public sidewalk shown on the attached plat between lot 7 and lot 8. It is my desire this sidewalk be deleted from all plans.

William Bull 7030 Culwells Ct
~~7040 Culwells Ct~~
~~7040 Culwells Ct~~

H. Bruce Cline & Alena 7045 Culwells Ct

Russell & Carol Jones 7044 Culwells Ct

Rita Bartz 7025 Culwells Ct

John Bartz 7025 Culwells Ct

Bob & Peggy McKelvie 7025 Culwells Ct

James & Sue Sweeney 7025 Culwells Ct

Chas & T. Herman Rose 7050 Culwells Ct

John & Brenda Jones 7050 Culwells Ct

Wm & Joyce Antypine 7054 Culwells Ct

William & Helen 7011 Culwells Ct

Therese Thompson 7024 Culwells Ct

Bill & Norma Sweeney 7040 Culwells Ct

Jack & Rose-Lee 7030 Culwells Ct

Edna & Leonard Wood 7044 Culwells Ct

Mam & June Gooding 7160 Culwells Ct

Craig Larabee & Janet Larabee 7130 Culwells Ct

Kent and Janet Remington 7150 Culwells Ct

Catherine J. MacDonald 7121 Culwells Ct

Ernest & Virginia Olson 7051 Culwells Ct

Craig Larabee 12/18/03
 Notary Date

Memorandum

To:	Tom Cajka, Planning Department
From:	Charles W. Baker, Public Works and Utilities
Subject:	Waiver #04016 Pedestrian Easement Edenton South
Date:	November 10, 2004
cc:	Randy Hoskins Harry Kroos

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request to remove the pedestrian easement on the southeast corner of 70th and Old Cheney to the southeast onto Culwells Court. Public Works has the following comment:

- The waiver request states that construction of the sidewalk in the pedestrian easement will cause a damming effect on the drainage of this area. That condition can be alleviated with culverts in the swale area under the sidewalk within the easement. Public Works has visited this site on several occasions about the drainage problems and standing water in this area. The sidewalk construction in this area should be engineered since the grading plan has been adjusted to compensate for the drainage and to meet ADA requirements.

IN SUPPORTITEM NO. 3.2: WAIVER NO. 04016
(p.83 - Public Hearing - 11/24/04)

November 12, 2004

RE: WAIVER NO. 04016
S. 70th Street & Old Cheney Road

Dear Property Owner:

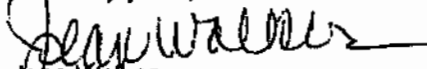
Pursuant to Section 27.81.050(c) of the Lincoln Municipal Code (Notice of Public Hearings), you are hereby advised that the City of Lincoln has received an application for WAIVER NO. 04016, to waive sidewalk in the pedestrian easement, on property legally described as Outlot A, between Lots 7 and 8, corrected plat of Edenton South 10th Addition, located in the NW 1/4 of Section 15-9-7, Lancaster County, Nebraska, generally located at S. 70th Street and Old Cheney Road.

The public hearing on this application will be held before the Lincoln City/Lancaster County Planning Commission on Wednesday, November 24, 2004. The public hearing is your opportunity to appear and speak upon the merits of this application. The Planning Commission meeting commences at 1:00 p.m. in the City Council Hearing Room on the first floor of the County-City Building, 555 South 10th Street, Lincoln, Nebraska. The public hearing procedures are found on the reverse side of this letter.

If you would like additional information, you are encouraged to contact the applicant, Charles Humble, at 476-1000 or Craig Larabee, President, Edenton South Townhome Assn., at 488-0654; or the project planner in the Planning Department, Tom Cajka, at 441-5662. You may also wish to appear at the public hearing or submit your comments prior to the public hearing in writing to the Planning Commission at the Planning Department address, by email to plan@lincoln.ne.gov, or by fax to 402-441-6377. The Planning Department staff report and recommendation will be available in the Planning Department office on Thursday, November 18, 2004, after 3:00 p.m.

The "Planning Commission Agenda", including the staff report on this application, will also be available on Internet at that time, (<http://www.lincoln.ne.gov/city/plan/pcagenda/index.htm>).

Sincerely yours,


Jean Walker
Administrative Officer

cc: Charles Humble
Craig Larabee, President, Edenton South Townhome Assn.
Terri Heckman, Colonial Hills Neighborhood Assn.
Kathryn Dixon, Colonial Hills Neighborhood Assn.
Stephen Nickel, Family Acres Assn.
Dorothy Iwan, Family Acres Assn.

016

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We are against having the sidewalk, due to the cost & liability.

*Bob & Pam Kittelson
7114 Culver's Ct.*

**CITY OF LINCOLN
NEBRASKA**

MAYOR COLEEN J. SENG

www.ci.lincoln.ne.us

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